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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/029,404	12/20/2001	David W. Koenig	KCC 4798 (14,442B)	2078

321 7590 10/08/2003

SENNIGER POWERS LEAVITT AND ROEDEL
ONE METROPOLITAN SQUARE
16TH FLOOR
ST LOUIS, MO 63102

EXAMINER	
TRUONG, LINH T	
ART UNIT	**PAPER NUMBER**
3761	6

DATE MAILED: 10/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/029,404	KOENIG ET AL.	
	Examiner	Art Unit	
	Linh Truong	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-15 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-15 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4,5 .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claim Objections

Claims 1-~~25~~ 15 are objected to because of the following informalities: please spell out what "sp." is. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 6, and 8-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Znaiden et al. (Znaiden) '6,159,487.

For claims 6 and 8-11, Znaiden teaches a flexible pad with a composition that includes 0.00001 to 10% of Yucca extract (col.1, lines 51-52, col. 2, lines 58-59, 65-68, and col. 4, line 45) absorbed into the pad.

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 5-6 and 8-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Tyrrell et al. (Tyrrell) U.S. Publication 2002/0136755 (IDS).

For claims 1, 5-6 and 8-11, Tyrrell teaches a flexible absorbent article and/or wipe with a composition that includes 0.1 to 10% of Yucca extract (pg.1 [0001] and pg.7 [0040]) applied to the topsheet or surface for application to a user's skin.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tyrrell et al. (Tyrrell) U.S. Publication 2002/0136755.

For claim 2, Tyrrell disclosed the claim method but does not expressly teach applying at least about 0.001 gram per square centimeter of Yucca extract to the user's skin. Since Tyrrell does teach a 0.1 to 10% Yucca extract by weight in the composition, it is obvious to one with ordinary skill in the art that at least 0.001 gram of Yucca extract can be applied to the user's skin.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tyrrell et al. (Tyrrell) U.S. Publication 2002/0136755 in view of Palumbo et al. (Palumbo) EP 0 922 457 A1.

For claim 7, Tyrrell teaches the invention as claimed and an absorbent article with at least three layers (top sheet 22, core 24, and backsheet 20)(fig. 2), but does not disclose that the Yucca extract is in the core. Palumbo et al. discloses an absorbent

article that has a skin care composition incorporated within the top sheet, core, or the backsheet (pg. 8, [0073]). Therefore, it is obvious to one with ordinary skill in the art at the time the invention was made to have the skin care composition (Yucca extract) to be incorporated throughout the absorbent article (core included), as with Palumbo's absorbent article for more efficient coverage in order to reduce skin rash by reducing the enzyme activity enzymes (see abstract).

Claims 3-4 and 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tyrrell et al. (Tyrrell) U.S. Publication 2002/0136755 in view of Henderson '6,228,265 (IDS).

For claims 3 and 12-15, Tyrrell teaches the claimed invention except for the composition specifically containing *Yucca schidigera.* Henderson teaches a composition that contains *Yucca schidigera* for enhanced bio-decomposition (col.1, lines 33-36). Therefore, it would be obvious to one with ordinary skill in the art at the time the invention was made to provide the composition of Tyrrell with *Yucca schidigera* for enhanced bio-decomposition.

For claim 4, Tyrrell and Henderson disclose the claimed method but do not expressly teach applying at least about 0.001 gram per square centimeter of *Yucca schidigera* extract to the user's skin. Since Tyrrell does teach a 0.1 to 10% Yucca extract by weight in the composition, it is obvious to one with ordinary skill in the art that at least 0.001 gram of Yucca extract can be applied to the user's skin.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 and 3 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 35 and 39, respectively, of copending Application No. 10/028752. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of copending Application No. 10/028752 also claim a "... method of inhibiting production of ammonia from urine *held adjacent a wearer's skin by an article*...," thus it is obvious to one with ordinary skill in the art to conclude that this method involves applying the composition (including *yucca schidigera*) to the skin via the article.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Linh Truong whose telephone number is 706-605-4974. The examiner can normally be reached on M-F 8:30am-5pm.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

Linh Truong
*** L.T.

WEILUN LO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700